

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

JESSICA LITZINGER

*

Plaintiff

*

v.

*

Case No.: JFM 02 CV 4115

BRADLEY MCGURK

*

Defendant

*

* * * * *

**MOTION TO ENLARGE TIME FOR
SERVICE OF PROCESS**

Plaintiff, by and through her attorneys, Duane A. Verderaime, and Verderaime & DuBois, P.A., requests that the time for service upon the defendant, Officer Bradley McGurk, be enlarged.

1. The deadline to effect service on defendant McGurk was on or about April 20, 2003, and therefore, has expired.

2. Defendant McGurk was apparently served on March 3, 2003, as evidenced by the attached Affidavit of Private Process Server.

3. In a letter dated April 15, 2003, the Assistant Attorney General, Betty Stemley Sconion, informed plaintiff that Officer McGurk has denied being served.

4. Plaintiff believes in good faith that Officer McGurk was served. However, the possibility exists that the wrong individual was served with the Complaint and associated papers in this case. (See attached letter from the Attorney General's office.)

WHEREFORE, the plaintiff respectfully requests that this Honorable Court grant the

Motion to Enlarge Time for Service of Process to positively serve Officer McGurk through the means suggested by the Assistant Attorney General.

Respectfully submitted,

Duane A. Verderaime
Federal Bar #023874
Verderaime & DuBois, P.A.
1231 North Calvert Street
Baltimore, Maryland 21202
(410) 752-8888
Attorney for Plaintiff

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MEMORANDUM OF LAW IN SUPPORT OF
THE MOTION TO ENLARGE TIME

Plaintiff filed a complaint against Officer Bradley McGurk asserting violations under 42 U.S.C. §§ 1983 and 1988, and the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

STATEMENT OF FACTS

On December 18, 2002, plaintiff filed a timely Complaint in the United States District Court for the District of Maryland and received the summons from the Court on or about December 20, 2002. Initial service was attempted on Officer McGurk by certified, restricted delivery mail through the United States Postal Service. However, the mail was returned as “refused.”

On March 3, 2003, a private process server, Robert Dixon, alleges that he served Officer Bradley McGurk. (See attached Affidavit of Private Process Server.)

It appears that Officer McGurk denies ever being served with the present Complaint, and therefore, no responsive pleading has been filed.

STATEMENT OF LAW

The Federal Rule of Civil Procedure 4(m) requires the Court to extend the time when the movant shows good cause. *See Henderson v. U.S.*, 517 U.S. 654, 662 (1996). The rule also permits the Court to extend the time even when the movant is unable to show good cause. *See Henderson*, 517 U.S. at 658 n.5; *Petrucelli v. Bohringer & Ratzinger, GMBH*, 46 F.3d 1298, 1305 (3d Cir. 1995).

ARGUMENT

Plaintiff attempted to effect service on defendant pursuant to Maryland Law of Civil Procedure, by certified mail. However, that mail was returned and the Assistant Attorney General has indicated that Officer McGurk denies being personally served with the Complaint and associated papers. Defendant will not be prejudiced in any way by the Court granting an extension of service.

WHEREFORE, the plaintiff respectfully requests that this Honorable Court grant the Motion to Enlarge Time for Service of Process to positively serve Officer McGurk through the means suggested by the Assistant Attorney General.

Respectfully submitted,

Duane A. Verderaime
Federal Bar #023874
Verderaime & DuBois, P.A.
1231 North Calvert Street
Baltimore, Maryland 21202
(410) 752-8888
Attorney for Plaintiff

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AFFIDAVIT OF PRIVATE PROCESS SERVER

The undersigned hereby certifies that he executed service of process pursuant to the authority granted by the Court upon Bradley McGurk, witness, on the 3rd day of March 2003, at 2433 Pulaski Highway, North East, Maryland 21901, by delivering and leaving with him a copy of the Complaint and Demand for Jury Trial, General Consent to Proceed Before a United States Magistrate Judge, and Disclosure of Corporate Interest.

The undersigned further certifies that he is over eighteen (18) years of age and is not a party to this action.

Robert P. Dixon
Process Server.

CARMEN M. SHEPARD
DEPUTY ATTORNEY GENERAL

DONNA HILL
DEPUTY ATTORNEY GENERAL

DEPUTY COUNSEL

MARK H. ROWED
ASSISTANT ATTORNEY GENERAL

STATON DONALD E. HOFFMAN
ASSISTANT ATTORNEY GENERAL

RICHARD M. KASTENDIECK
ASSISTANT ATTORNEY GENERAL

H. SCOTT CURTIS
ASSISTANT ATTORNEY GENERAL

OFFICES OF

THE ATTORNEY GENERAL

DEPARTMENT OF MARYLAND STATE POLICE
1201 REISTERSTOWN ROAD
PIKESVILLE, MARYLAND 21208
(410) 653-4223
FAX (410) 653-4270
TOLL-FREE 1-800-525-5555

April 15, 2003

Duane A. Verderaime, Esquire
Verderaime & Dubois, P.A.
1231 North Calvert Street
Baltimore, MD 21202

Re: *Jessica Litzinger v. Officer Bradley McGark*
United States District Court
For the District of Maryland
Case No: JFM 02 CV 4115

Dear Mr. Verderaime:

I am in receipt of an April 7, 2003 letter from you wherein you discuss the attempts to serve "Officer" Bradley McGurk with a Complaint and Summons. The letter was also directed to the Maryland State Police Internal Affairs Unit for handling.

Upon basic inquiry, I have been advised that TFC McGurk has not been served and the Office of the Attorney General has not been retained to represent him in the civil matter to date. Accordingly, no response to the Complaint is required at this time. Should you wish to effectuate proper service, you may contact him or the Commander at the Maryland State Police North East Barrack. The address is 2433 Pulaski Highway, North East, Maryland 21901-2799 and the telephone number is 410-398-8101.

Sincerely,

Betty Stemley Sconion

Assistant Attorney General

/bjj